

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2774 of 1994

and

SPECIAL CIVIL APPLICATION No 8503 of 1995

with

CIVIL APPLICATION NO. 8495 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

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G.N.BRAHMBHATT

Versus

MUNICIPAL COMMISSIONER

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Appearance:

1. Special Civil Application No. 2774 of 1994 & Special Civil Application No. 8503 of 1995

MR RD RAVAL for Petitioner in both the matters

MR PRANAV G DESAI for Respondent No.1 in both the matters

2. Civil Application No. 8495 of 1997

MR PRANAV G. DESAI for petitioner

MR RD RAVAL for respondent

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CORAM: M.R. CALLA, J.

Date of Decision: 02/11/1998

COMMON ORAL JUDGMENT :

The petitioner herein, claiming to be a Science Graduate and Diploma in Civil Engineering, with 67% marks, claims that he was appointed as Assistant Chemist in April 1983 in the Public Health Engineering Laboratory of the Vadodara Municipal Corporation. The factual position that he was appointed as Assistant Chemist in April 1983 is not disputed by the respondent Corporation also; however the petitioner further claims that he had been discharging the duties of Deputy Executive Engineer (Public Health) and that such post was available since 1983. He, therefore, filed Special Civil Application No. 2774 of 1994, raising a grievance against non-appointment and non-regularisation on the aforesaid post of Deputy Executive Engineer (Public Health) and for not paying the charge allowance. This Special Civil Application No. 2774 of 1994 dated 25th January 1994 was filed on 25th February 1994 for the reliefs as aforesaid and after issuing notice on 28th February 1994, the Rule was issued on 16th August 1994, on which date, the order to maintain status quo as on that date with regard to the service conditions of the petitioner to be maintained was also granted. The respondent Corporation filed reply affidavit dated 2nd August 1995. In this reply, it was stated that there was no post either of the Deputy Executive Engineer (Public Health) or of Assistant Executive Engineer in the Public Health Engineering Laboratory of the respondent Corporation and no order whatsoever had been passed entrusting the duties and responsibilities of any post higher than that of Assistant Chemist to the petitioner and as such, the petitioner's claim for absorption or regularisation on the post of Deputy Executive Engineer or any post higher than that of Assistant Chemist was wholly misconceived and there is no question of paying any charge allowance as prayed by the petitioner.

2. Having argued the matter for some time, the learned Counsel for the petitioner seeks to withdraw this Special Civil Application No. 2774 of 1994 and, therefore, this Special Civil Application is hereby dismissed as withdrawn, the Rule is hereby discharged and the interim order of maintaining status quo with regard to the service conditions of the petitioner as ordered on 16th August 1994 stands automatically dvacated.

3. However, the withdrawal of this Special Civil Application is not the end of the controversy because, the respondent Corporation had issued a charge sheet vide

Memorandum dated 14th July 1995 to the petitioner in which, as many as six charges have been levelled against the petitioner for misusing the designation and seal of the Deputy Executive Engineer by him without any authority and also by signing the correspondence and certificate etc. as Deputy Executive Engineer of the Laboratory for which he had no authority whatsoever. The petitioner, therefore, filed another Special Civil Application No.8503 of 1995 challenging the charge sheet dated 14th July 1995 and this Special Civil Application dated 24th September 1995 was filed by the petitioner on 29th September 1995. On 5th July 1996, the notice was issued to the respondent Corporation and thereafter the Rule was issued on 3rd October 1996. While issuing Rule on 3rd October 1996, an interim order was also passed that, no final decision shall be taken in the inquiry. The affidavit-in-reply dated 26th July 1996 filed by the respondent Corporation is on record. It is given out by Mr.Desai, learned Counsel appearing for the respondent Corporation, Vadodara, that during the pendency of this Special Civil Application No.8503 of 1995, a Civil Application No.8495 of 1997 was moved by the Municipal Corporation stating therein that the inquiry proceedings have been concluded and, therefore, the concerned disciplinary authority may be permitted to take further proceedings in the matter and to arrive at a final decision in the departmental inquiry Case No.23 of 1995. In this Civil Application, an order was passed on 17th October 1997 that the Special Civil Application may be listed for final hearing. It is also given out by Mr.Desai for the Corporation that the petitioner has already been shifted from the Public Health Engineering Laboratory to Ajwa Dam Office of the Corporation. However, Mr.Raval appearing for the petitioner submits that he is only required to go to the river bed for the purpose of collecting sample of the water. Mr. Desai appearing for the Corporation has submitted that in the inquiry report, the allegations with regard to the misuse of the designation of Deputy Executive Engineer and the Seal have been found to be proved, but it has also been held that by such misuse made by the petitioner, no financial loss has been caused to the Corporation.

4. In the facts and circumstances of this case, there is no question of quashing the charge sheet dated 14th July 1995 and it is open for the Municipal Corporation to pass appropriate orders on the basis of the inquiry report as aforesaid in accordance with law after giving the copy of the inquiry report to the petitioner and considering the representation, if any, which may be made by the petitioner, but keeping in view

the fact that in the inquiry report, it has been found that by the misuse of the designation of Deputy Executive Engineer and the Seal etc., by the petitioner, no financial loss has been caused to the Corporation, it is expected that the Corporation would take a reasonably lenient view with regard to the quantum of the punishment and if at all any punishment is decided to be imposed, that may be a short of petitioner's termination, dismissal/removal from the service and only a minor punishment may be considered to be sufficient. This Special Civil Application No.8503 of 1995 is, therefore, dismissed with the observations as aforesaid and the Rule issued therein is hereby discharged.

5. In view of the order passed in the main Special Civil Application No. 8503 of 1995, no orders are required to be passed in Civil Application No. 8405 of 1997 filed in Special Civil Application No. 8503 of 1995 and the same stands disposed of accordingly.

6. Both the Special Civil Applications and the Civil Application are decided as above. No order as to costs.

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